

BULLETIN

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Commission Files Comments on Petition to Amend Its Rules

In September 2004, the Maricopa County Attorney's Office filed a petition with the Arizona Supreme Court to amend the Rules of the Commission on Judicial Conduct. Among other things, the petition, if approved, would require the disclosure of all complaints (dismissals, advisory letters, diversions, admonitions, reprimands, and formal sanctions); amend the definition of "record" to include all the documents filed in a case; and add language clarifying that complainants, judges and witnesses are free to disclose information about proceedings.

The commission's position is that dismissed complaints should remain confidential. The majority of complaints filed with the commission are dismissed because there is no evidence of misconduct or the complaints involve legal issues outside the commission's jurisdiction. The commission agrees that the public should be advised when judicial misconduct is found, but it maintains that no negative consequences, political or otherwise, should befall a judge absent an actual finding of misconduct. Accordingly, the commission is recommending two major changes in the rules as an alternative to the county attorney's proposal.

First, the rules should be amended to provide for informal and formal public sanctions. An informal sanction would involve a serious matter that can be resolved without a public hearing, and the only sanction in this category would be a public reprimand. To avoid confusion, the use of admonitions and advisory letters, as such, would be eliminated in favor of dismissals with comments. Formal sanctions would cover all other disciplinary proceedings in which recommendations are filed with the supreme court following a public hearing. The only sanctions in this category are censure, suspension, removal or retirement of a judge.

Second, in informal cases resulting in a reprimand, public disclosure should be limited to the complaint, the judge's response, the commission's findings, if any, and the final dispositional letter. In formal cases, all of the documents and pleadings filed after the notice of formal proceedings would be available to the public, as now provided in the rules. All other records would remain confidential.

To read the commission's comments, which are posted on its website, click on www.supreme.state.az.us/ethics and look under "Rules." The supreme court has extended the deadline for comments to the petition to March 2, 2005.